

NO. 1:09-CV-12-WLS

contaminated with *Salmonella* involves hundreds of peanut butter and peanut butter-containing products.

The Plaintiffs' child consumed peanut butter-containing crackers manufactured by Kellogg in the days prior to the onset of his culture-confirmed *Salmonella* Typhimurium infection. This product was subsequently recalled after Food and Drug Administration (FDA) tests revealed that some of Kellogg's cracker products were contaminated with *Salmonella*.

The Plaintiffs filed the original Complaint against the Defendant PCA only. Prior to the filing of an Answer by Defendant PCA, on January 28, 2009, the Plaintiffs filed a First Amended Complaint that added a claim for punitive damages against the Defendant PCA.

Following the filing of the First Amended Complaint, the Plaintiffs learned that Defendant PCA has limited assets and that on February 3, 2009, a Complaint For Declaratory Judgment was filed against Defendant PCA by its insurer, Hartford Casualty Insurance Company, in the United States District Court for the Western District of Virginia. While the Complaint For Declaratory Judgment fails to state the specific issues for which judgment is sought, it is clear that Hartford is seeking to disclaim insurance coverage for the civil claims now filed, and likely in the future to be filed, against Defendant PCA.

Accordingly, the Plaintiffs seek leave to amend their First Amended Complaint to add Kellogg as an additional Defendant in this action. The Plaintiffs also seek leave to correct the state of incorporation for the original Defendant PCA from a Virginia corporation to a Georgia corporation.

The attorneys for Defendant PCA do not oppose this motion and consent to Plaintiffs' request to amend their Complaint.

DATED: February 5, 2009.

Attorneys for the Plaintiffs

FLYNN PEELER & PHILLIPS, LLC

/s/ Patrick S. Flynn

Patrick S. Flynn, GA State Bar #004765

Charles E. Peeler, GA State Bar #570399

Flynn Peeler & Phillips, LLC

517 W. Broad Ave.

Post Office Box 7 (31702)

Albany, Georgia 31701

Tel. (229) 446-4886

Fax (229) 446-4884

William D. Marler, WSBA #17233

bmarler@marlerclark.com

MARLER CLARK, LLP PS

701 First Avenue, Suite 6600

Seattle, WA 98104

Tel. (206) 346-1888

Fax (206) 346-1898

(pending admission *pro hac vice*)

Attorneys for the Defendant PCA

Weinberg, Wheeler, Hudgins, Gunn & Dial

/s/ Alan M. Maxwell

Alan M. Maxwell, GA State Bar #478625

950 East Paces Ferry Road

Suite 3000

Atlanta, Georgia 30326

Tel. (404) 832-9515

Fax (404) 875-9433